IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Revision No. 53/2001
(Old No. 324/1987)

Jumma, son of Chotey,

R/o village Bahadurganj, P.S. Dilari,

District Moradabad .....Revisionist.

Vs.

State .....Respondent.

Sri Dharam Veer Sharma, Advocate learned counsel for the revisionist.

Sri K.S.Rautela, learned A.G.A. for respondent.

Date: 22-12-2003

ORAL JUDGMENT (**Per: Irshad Hussain, J.)**

This is a criminal revision against the judgment and order dated 12.2.1987 passed by the Sessions Judge, Nainital in criminal revision No. 204/1985. The said appeal was filed against the judgment dated 7.12.1985 passed by Special Judicial Magistrate, Kashipur whereby the revisionist was convicted and sentenced to undergo R.I. for a period of one year and also to pay fine of Rs. 2000/- under section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'). In appeal the conviction was maintained. However the sentence awarded to the revisionist was modified and instead of R.I. for one year he was sentenced to R.I. for a period of six months. Excepting this the sentence was maintained. Aggrieved by the appellate judgment this revision is preferred.

2- Revisionist Jumma S/o Chotey R/o village Bahadurganj, P.O. Sultanpur Longi, P.S. Dilari District, Moradabad was on 4.4.1982 at about 9 a.m. checked at station road Kashipur while carrying 12 liters of milk in a container for sale. The revisionist was given notice in Form No.VI (Ext. Ka.1) by the Food Inspector B.P. Sharma (P.W.1). He purchased 660 M.L. of milk said to be of buffalo from the revisionist on payment of of Rs. 1.32 as its price vide receipt (Ext.Ka.2). The sample so purchased was divided in three parts and kept in separate phials to which 18 drops each of formalin was added. These phials were sealed as per rules. At that time two departmental officials namely Durga Dutt Joshi, a Vaccinator and Munna Lal, Head Jamadar were with the Food Inspector but the presence of public witness could not be secured despite

efforts by the Food Inspector and endorsement to this effect was accordingly made on Ext. Ka.2. The thumb impression of the revisionist was obtained on Ext. Ka.1 and Ext. Ka.2. One of the sample was sent to Public Analyst, Lucknow with memorandum Form No. VII (Ext.Ka.3) and the other two phials were sent to Local (Health) Authority. Public Analyst gave report dated 6.5.82 (Ext.Ka.5) to the effect that milk sample was deficient in milk fat to the extent of 98% and in non-fatty solids to the extent of 39% and was thus found adulterated. The Food Inspector after completion of necessary formalities of seeking sanction (Ext.Ka.7) filed written complaint (Ext.Ka.8) against the revisionist on 28-8-1982.

3- Revisionist had pleaded not guilty to the charge and contended that he has been falsely implicated in the case. He gave out that Food Inspector took milk from him but no price was paid. However he admitted that his thumb impression was obtained on the receipt. He further urged that his daughter was sick and on the advise of the medical officer he had purchased skimmed milk (separata) and while he was proceeding to his house he was checked by the Food Inspector and despite being told that the milk was not ment for sale the sample was taken by the Food Inspector. The milk dairy from where the revisionist allegedly purchased said milk was situate at Kashipur squire.

4- At the trial prosecution examined Food Inspector B.P.Sharma (P.W.1) and clerk of C.M.O. office D.S.Negi (P.W.2). The defence examined post-man Wazid Ali (D.W.1) to show that the notice as required under Section 13 (2) of the ‘Act’ was not received by him. The learned Magistrate accepted the prosecution version and accordingly convicted and sentenced the revisionist. As stated above the appeal was allowed to the extent of modification in the period of custodial sentence.

5- Learned counsel for the revisionist in the first instance argued that the Food Inspector has not sealed and packed the sample taken in three phials in the manner as prescribed under Part –V of the Prevention of Food Adulteration Rules, 1955(for short ‘Rules’) and particularly by adding formalin drops separately in three phials instead of adding the said preservative only once in the milk purchased for sample and that as a result of this no sanctity could be attached to the report of the Public Analyst that the milk was adulterated. Having gone through the evidence of Food Inspector B.P.Sharma I see no force in the submission. The reason is that as stated by the Food Inspector the sample was taken according to rules and it was divided in three

parts and were kept packed and sealed in clean and dry phials. He also gave evidence to the effect that 18 drops each of formalin were added in the three phials and therefore the requirement of Rule 19 of the 'Rules' was fully complied with. It is of significance that the Public Analyst has not reported that the same was not found fit for analysis and therefore it can not also be said that any prejudice was caused to the revisionist as a result of the said procedure followed by the Food Inspector. In the face of the facts of the case the decision in the case of **State of U.P. Vs. Badri; 1998(2) Prevention of Food Adulteration Cases (Allahabad High Court) 18** pressed into service by the learned counsel can not safely be applied to the facts of the case. In the case before the Allahabad High Court there was violation of Rules 16, 17 and 18 of the 'Rules' on the peculiar facts of the case and therefore the ration of the said decision that prosecution case gets weakened in the eye of law on account of adding separately preservative in three phials does not help the cause of the revisionist.

6- It was next argued that there was no compliance of the provision of section 13(2) of 'the Act' because the evidence of post-man Wazid Ali (D.W.1) prove that the alleged notice with the copy of report of the Public Analyst sent by registered post was not served on the revisionist on account of another person of the same name available in the village to whom the registered letter was infact delivered. Both the courts below have considered this aspect of the matter in great detail and the contention of the defence was rejected on the ground that the defence evidence failed to rebut the presumption that the registered letter was sent to the revisionist on his correct address and it must have been served on the right person, the revisionist in due course of the postal business. I see no infirmity in the approach of the courts below and the submission of the learned counsel can safely be said to be unconvincing. In short it need to be mentioned that the notice Ext. Ka.9 contain the full address of the revisionist. Postal receipt of registered envelope (Ext.Ka. 10) also reveal that the name of the revisionist with his parentage and case was clearly mentioned and there can be no doubt that the registered letter was sent on proper and correct address of the revisionist. In a situation like this when the name of the revisionist is Jumma S/o Chotey, caste Sheikh, the post-man D.W.1 there in that village for the last more than one decade was not expected to deliver the registered envelope to another person named as Jumma Khan, as is evidenced by receipt Ext.Kha. 1. It appears to be a deliberate and concerted

attempt to show that the letter was in fact delivered to the person other than revisionist and since the defence evidence was not convincing the courts below were fully justified in discarding the defence evidence and to hold that the compliance of section 13(2) of 'the Act' was made in this case.

7- It was also taken note of the fact that according to the revisionist himself the milk carried by him was skimmed (Separata) and in a situation like this if the revisionist was to take an option to sent another phial to Central Food Laboratory for analysis the result would not have been favourable to him. Therefore, in any event it was not the case of any prejudice caused to the revisionist for alleged non-compliance of the provision of section 13(2) of 'the Act'. Therefore the revisionist was rightly convicted for an offence punishable under section 7/16 of 'the Act'.

8- Lastly it was submitted that in the peculiar circumstances of the case there are reasons to reduce the sentence awarded to the revisionist. To bring home his point of view learned counsel pointed out that the sample ws taken on 4.4.1982 and the trial was concluded by judgment dated 7.12.85. Thereafter, for sufficient period the appeal remained pending for disposal and it was finally decided on 12.2.1987. On revision being preferred the same now came up for hearing and final disposal after more than 20 years of the date of the taking of the sample and there can be no doubt that the revisionist had been in agony on account of the prosecution for such a long period contrary to the constitutional mandate of speedy trial and justice. Learned counsel argued that in these circumstances the courts have been taking lenient view and even if minimum sentence is prescribed for an offence the same has been reduced to meet the ends of justice. Learned counsel therefore pressed into service the decision of the Apex Court in the matter of **Municipal Corporation of Delhi Vs. Tek Chand Bhatia; AIR 1980 S.C. 360** and also a decision of the High Court of Allahabad in the case of **Kishori Lal vs. State of U.P.; 2000(2) JIC 741 (Allahabad)** in support of his argument. Having gone through these decisions and considering that after the occurrence of the case the revisionist is not reported to have been involved in a criminal activity and also considering the long delay caused in the disposal of the case finally, it will be just and proper to reduce the sentence of the revisionist to the period already undergone but to enhance the fine to a sum of Rs. 4,000/- instead of Rs. 2000/- imposed by the Judicial Magistrate.

9- For the reasons aforesaid the revision is partly allowed. The revisionist Jumma is convicted and sentenced to the period already undergone and to pay a fine of Rs. 4000/-(four thousand) under section 7/16 of ‘the Act’. In default of payment of fine he shall suffer R.I. for 6 (six) months.

10- Let the record be sent back to the learned Magistrate for compliance. Compliance report be submitted within one month.

(Irshad Hussain, J.)

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